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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 38th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 22 November 1999, at 11 a.m.

Chairperson: Mrs. BONOAN-DANDAN

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* The summary record of the first part (closed) of the meeting appears as document E/C.12/1999/SR.38.

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The public part of the meeting was called to order at 11 a.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Initial report of Armenia (HRI/CORE/1/Add.57; E/1990/5/Add.36; E/C.12/Q/ARM/1; written replies provided by the Government of Armenia (document without a reference number))

1. At the invitation of the Chairperson, the delegation of Armenia took places at the Committee table.

2. The CHAIRPERSON welcomed the delegation of Armenia and expressed the hope that its dialogue with the Committee would be fruitful. In accordance with the Committee's usual practice, the delegation was invited to address the list of issues section by section, following which Committee members would put questions on the section being considered.

3. Mr. NAZARIAN (Armenia) said that the Committee's expert views were of great importance to his country, which was experiencing a variety of problems occasioned by the blockade imposed by Turkey and Azerbaijan. The report reflected the historical background of the country and the region and emphasized the right to self-determination of the people of Nagorny-Karabakh, a historical province of Armenia. It was difficult to speak about the realization of the rights embodied in the Covenant when the collective right of the Nagorny-Karabakh people to self-determination continued to be violated by Azerbaijan, whose lack of political will had so far precluded any agreement. There were, however, positive moves towards the achievement of a comprehensive and peaceful settlement of the Nagorny-Karabakh issue, in the framework of ongoing high-level negotiations with Azerbaijan.

4. The Government had submitted data on its territory, including the ethnic, demographic, economic and macroeconomic distribution of its population based on the official statistics for January-February 1999, and had clarified the general legal framework of human rights protection in Armenia.

5. The CHAIRPERSON invited members to put their questions concerning the first cluster of questions on the list of issues.

6. Mr. RIEDEL welcomed the Armenian delegation and commended the timely submission of the Government's detailed initial report (E/1990/5/Add.36) and written replies to the list of issues. He asked to what extent direct reference was made to the Covenant by the Armenian courts, and whether the delegation could cite specific instances. He asked whether the delegation could give an undertaking that its Government would apprise the Committee of its reaction to the proposal for a draft optional protocol to the Covenant circulated to States parties.

7. Mr. ANTANOVICH commended the punctuality with which the Government of Armenia, a country in transition, had submitted its initial report. Noting that, according to the

written reply to number 2 of the list of issues, the judiciary was responsible for the protection of human rights, he wondered whether there were any plans to transfer that competence to a parliamentary human rights commission or government agency.

8. Turning to the written reply to question 5, he said that "enhancing" the Armenian legislation was not the same as bringing it into line with the Covenant, as the authorities were required to do. Could the delegation be more specific about legislative acts that incorporated the provisions of the Covenant in domestic legislation?

9. Mr. SADI said he hoped that the Committee's first ever dialogue with Armenia would prove mutually beneficial and informative and that any shortcomings identified would be rectified in time for the submission of its second periodic report. Despite the detailed information provided, he was still unclear as to the status of the Covenant. The statement that the courts "may" refer to relevant provisions of the Covenant implied that its provisions were not binding. If they were, it would be unequivocally incumbent upon the courts to invoke them. Could the delegation state frankly the real status of the Covenant?

10. Mr. WIMER ZAMBRANO joined previous speakers in welcoming the delegation, stressing that Committee members were not judges or inquisitors, but simply seekers of information on the situation obtaining in its areas of concern. He asked the delegation to be more specific about the situation of Nagorny-Karabakh, currently Armenia's most pressing international problem. Did the figures provided refer exclusively to people living in Armenia, or also to those living outside its borders? What impact did the conflict have on the country's Azerbaijani minority?

11. Mr. THAPALIA asked how the Armenian Constitution addressed the equality of women and men and whether redress for unequal treatment could be sought through the courts.

12. Mr. CEVILLE joined Mr. Riedel in requesting information on progress made with reform of the judicial system in the context of the transition to a market economy, and on the extent to which the Covenant had been incorporated in that system. He too wished to know to what extent economic, social and cultural rights were taken into account in the courts, and whether the delegation could provide examples of cases in which their integration was corroborated by court decisions. He would also like to know the relationship between judges and public prosecutors.

13. Mr. MARCHÁN ROMERO sought more detailed information on the privatization regime for agricultural land instituted under the agrarian reform effected in the wake of the country's change to a free-market economy. He wished to know whether it had come about through constitutional reform, and whether it was optional or imposed by law. He would also like to know how many hectares of land had not yet been privatized.

14. Mr. KAZHOYAN (Armenia) said he was glad of the opportunity for discussion of Armenia's initial report, which would enable the country to make further progress in its realization of economic, social and cultural rights. Replying to the questions raised by Mr. Riedel and Mr. Ceville, he said that the process of incorporating the provisions of the international instruments signed or ratified by Armenia in the domestic legislation had lasted from 1992 until 1997, by which time most of the legislation had been brought into line with

international requirements. The former Soviet legislation had been replaced by new laws, and the provisions of the Covenant had been incorporated with the assistance of national and international experts. It was not the Covenant, but the domestic legislation into which the Covenant had been integrated, that was cited in the courts. The Covenant was therefore implemented through the national laws.

15. It was hoped to take up the issue of the Government's position regarding the proposed Optional Protocol with the newly elected parliament by the end of the year.

16. In response to Mr. Antanovich's question about human rights institutions in Armenia, he said that the Constitution was the main guarantor of the human rights of Armenian citizens. However, work was also being done to establish human rights institutions, first and foremost that of an ombudsman. The new President had issued a decree establishing a Human Rights Commission, which had studied many human rights issues as well as requests and communications from citizens, under a temporary arrangement until the post of ombudsman was established. It had also been felt, however, that the institution would need to be embodied in the Constitution by means of a specific article. A draft law for that purpose had been prepared and submitted to the National Assembly. However, a technical issue arose, namely, that any change in the Constitution would require a referendum. Two courses had been proposed: one possibility would be to link the issue of the ombudsman with other important issues, including citizenship. The other course would be to introduce the institution into the Constitution through a waiver whereby it could be adopted by a two-thirds majority in the National Assembly. The recent tragic events in Parliament had caused some delay in that body's work and it was hoped that the matter could be take up soon. In the meantime, the Human Rights Commission would now finalize creation of the post.

17. Mr. SAMVELIAN (Armenia) said that the work of the NGOs was taken into account in the Commission and that representatives of the various minorities also played an active role in decision-making. In 1998, departments of human rights had been set up in the Ministries of Foreign Affairs and of Minority Affairs.

18. In response to the question about the status of the Covenant in domestic legislation, he said that, after the declaration of Armenian independence, a reform process had been started that involved drafting new codes of criminal and civil procedure. The Civil Code was already in force but the code of criminal procedure would need a third reading before it came into effect. He believed that the spirit of the Covenant was already fully reflected in the legislation, although he could not quote any provision exactly reproducing its language. The Constitution already provided that, upon ratification, treaties entered into by Armenia formed an integral part of domestic legislation and had primacy over other legislative acts of the Republic. However, the delegation had no information on any cases in which judges had referred directly to the Covenant. He believed there had been some indirect references.

19. Regarding discrimination against women, he pointed out that article 15 of the Constitution prohibited discrimination on grounds, inter alia, of race or sex. Further details in that connection would be found in Armenia's second periodic report to the Committee on the Elimination of Discrimination against Women (CEDAW/C/ARM/2).

20. Mr. KAZHOYAN (Armenia), in reply to the question by Mr. Wimer Zambrano regarding Azerbaijanis in Armenia and the impact on them of the Nagorny-Karabakh conflict, said that the figures given in the report dated from the 1989 census. There had been a number of demographic changes in Armenia since that time. In 1988 the aspiration of the people of Nagorny-Karabakh had been that their Autonomous Region within the Republic of Azerbaijan should be transferred back to Armenia. At that time, some 2½-3 per cent of the population of Armenia had been Azerbaijanis - one of the many national minorities in the country. After the raising of the re-unification issue by the Parliament of the Autonomous Region, the Supreme Soviet of Armenia had adopted a decision calling for the territory to be transferred. Those peaceful demands, however, had been met by a series of pogroms and massacres directed against the Armenian population in Azerbaijani cities. The result had been that some 350,000 Armenians living in Azerbaijan had been forced to flee and find refuge in Armenia.

21. At the same time, there had been an attempt by the Azerbaijani authorities to instil a fear of reprisals in the Azerbaijanis living in Armenia and encourage them to leave. Almost the entire Azerbaijani minority had thus emigrated from Armenia, and most of the few that remained were members of mixed families. He noted in that connection that the Government of the Armenian Soviet Socialist Republic had paid compensation equalling some US$ 110 million in respect of assets left behind in Armenia by the Azerbaijanis, but that the 350,000 refugees who had left Azerbaijan had so far received not one kopeck from the Azerbaijani Government, although they had tried to raise the issue of appropriate compensation with the Armenian Government and international authorities.

22. Shortly after, fighting had erupted in Nagorny-Karabakh. After two or three years of fighting, resulting in a large number of casualties on both sides, the Minsk Conference of the Organization for Security and Cooperation in Europe (OSCE) had succeeded in sponsoring a ceasefire that was still holding firm. Since that time, however, negotiations had reached an impasse. The most recent proposal, put forward by the co-chairmen of the Minsk Group some 12 months previously, had been accepted by Armenia and Nagorny-Karabakh but rejected by Azerbaijan, and there had been no further negotiations for six months. There were, however, signs of a positive outcome to the bilateral negotiations being held by the President of Armenia and the President of Azerbaijan.

23. Mr. GRISSA, speaking on a point of order, reminded the delegation that the Committee was not a political forum and was not empowered to discuss questions of a political nature. It was concerned with the effects of the conflict on the population, not with the current state of negotiations between the parties.

24. Mr. KAZHOYAN (Armenia) said that most of Armenia's current problems affected the rights of the people of Armenia in various ways. It was a fact that, apart from the problems common to countries in the throes of economic transition and the aftermath of the catastrophic 1988 earthquake, the situation had unquestionably been made worse by the 350,000 refugees forced to flee Azerbaijan. The conflict had clearly had an effect on the population of Armenia and of the whole region. Every effort was being made to find a political solution and recourse to non-peaceful means had been ruled out.

25. He regretted that he could not immediately provide complete figures in regard to the privatization of agriculture. He could, however, briefly describe the current situation. Armenia had been the first country to proceed with privatization in the post-Soviet era following the 1992 decision to privatize agricultural lands, some 80 per cent of all land had been completely privatized and transferred, free of charge, to the private ownership of the people who had lived and worked on the collective farms prior to Armenian independence. Some State-owned agricultural land which had belonged to various State enterprises, such as scientific institutes and the State distilleries, accounting for about 20 per cent of the whole, had been kept in reserve pending subsequent privatization. No problems had been encountered and no coercion had been necessary. The people had been psychologically ready for private entrepreneurship, especially in the rural areas. He had been able to see for himself the public enthusiasm for the process when he had visited some privatized farmlands in the company of a delegation from the United States Department of Agriculture in 1993.

26. Some technological problems had arisen after the initial stages, the first being that the old Soviet-made agricultural machinery had proved too big to use on smallholdings. International assistance had made it possible to start producing smaller-scale machinery and the problem had been overcome. Interestingly enough, one ethnic group, the Molokans, had rejected private ownership and tried to persevere with collective farming. After three or four years, they too had embraced privatization. Currently, the country was facing the opposite phenomenon: in some villages in the countryside families were deciding to unite in small cooperative operations. There was no State regulation in that connection and the private owners were free to take whatever decisions they wished.

27. Mr. RIEDEL said that his hope in asking about specific court decisions had been that the next periodic report might perhaps provide a more detailed answer. His question had been partly intended to encourage the delegation to work to increase the Government's awareness of the need to take the provisions of the Covenant into account. There seemed to be some degree of selectivity in the process of incorporating economic, social and cultural rights in the domestic legal order. Armenia appeared to adopt a dualistic approach whereby international law was not directly applicable until it had been enacted in the form of internal legislation. The danger with that approach was that obligations under the Covenant tended to be only selectively adopted as domestic obligations. He asked what steps the Government intended to take to ensure that all government agencies, the courts and the legislature were aware of the country's obligations under the Covenant.

28. Like all other States parties, Armenia had been asked to comment on the proposed optional protocol. The Committee had received very few responses as yet. Could the delegation give any indication of Armenia's preference in that connection?

29. Mr. SADI said that, in response to his question about the status of the Covenant, the delegation had replied that its spirit was reflected in the Constitution and in domestic legislation. However, the Committee was concerned, not just with the spirit but also with the letter of the law. He recommended that, for future reports, the delegation should refer to the Committee's general comments on a number of key articles of the Covenant, which would give it a deeper insight into what needed to be done to meet the Committee's requirements.

30. Mr. GRISSA, referring to the privatization of agricultural land, said it was well known that Armenia was a very mountainous country. What was the proportion of agricultural land to the total land surface, what were the main crops and what was the situation vis-à-vis nutrition? He noted that Armenia was also highly dependent on foreign trade. What was the state of trade with the neighbouring countries of Turkey and Georgia? He understood that there was now a plan to build a pipeline from the Caspian Sea to the Mediterranean that would bypass Armenia. How would that affect the country's future welfare?

31. Mr. CEVILLE said he still had some doubts about the applicability of the Covenant in Armenia. Although the delegation claimed that the spirit of the Covenant was applied, it was unable to cite from memory any direct reference thereto in the legislation in force. Article 2 of the Constitution, however, stated that, once ratified, international agreements became part of the national legal framework. He would welcome some additional information on the direct application of the Covenant in the legal system as required by the Constitution. Had any procedure been established whereby an Armenian citizen could claim protection in law if he regarded his economic, social or cultural rights as having been violated?

32. Mr. AHMED asked how the Government could reconcile the realization of economic, social and cultural rights with the drastic measures demanded by the economic situation. Armenia was a small landlocked country with few natural resources and only a small area of arable land; its situation had been exacerbated by the blockade imposed by Turkey and Azerbaijan and by the closure of Armenia's only nuclear power plant after the 1988 earthquake; and, of all the former Soviet republics, it had suffered the worst decline in gross domestic product (GDP): 60 per cent between 1991 and 1993. Recent success in reversing that trend and tackling inflation had come at the cost of a deterioration in the overall quality of life. In 1995, the United Nations Development Programme (UNDP) had reported that the population consisted of a rich elite and a vast army of poor and deprived. According to a current estimate by the World Bank, 90 per cent of the population lived below the poverty level and in some regions the rate of unemployment was 58 per cent. How had all that affected the realization of economic, social and cultural rights? What percentage of the reduced budget was devoted to housing, to education or to the right to work?

33. The high rate of male emigration meant that women currently constituted 70 per cent of the population. Nevertheless, several non-governmental organizations (NGOs) complained that women had been the first victims of increasing unemployment. Eighty per cent of women were said to be looking for work and finding none. Other sources claimed that during the privatization process, government land had been transferred in women's names only when the men of the family were absent. That exclusion from land privatization was a violation of women's economic rights.

34. Mr. RATTRAY said that it was unclear how the Armenian Government viewed the status and nature of the rights embodied in the Covenant. The initial report (E/1990/5/Add.36) suggested that those rights were regarded, not as legal obligations, but simply as aspirations. Were all rights treated on an equal footing?

35. The delegation had implied that privatization had to a certain extent absolved Armenia of its responsibility for observing the rights contained in the Covenant. Paragraph 28 of its initial

report stated that the Constitution did not place the State under any obligation to provide work for all citizens, as had used to be the case, since under the conditions of a free market and private enterprise the State was unable in practice to provide employment for all. Although that might be true, the State was obliged to fulfil its obligations irrespective of the system of government. The most important factor was the delivery of results.

36. Mr. SAMVELIAN (Armenia) said that under the Armenian Constitution international legal instruments could operate independently of internal laws. The absence of court judgements invoking such instruments was the result of inexperience on the part of judges. Armenia did, however, implement the teachings of those instruments: for example, the Covenant had been translated into Armenian so that it could be more widely disseminated. Responding to the question raised regarding the links between courts and the Procurator-General, he said that that official had two basic functions: he supervised the administration of criminal justice, and acted as a general authority in verifying the legality of the decisions taken.

37. Mr. KAZHOYAN (Armenia) said that independence had added new problems to those inherited from the former Soviet Union; it had been difficult to ascertain which issues should be given priority, so that initially no human rights institutions had been established. The ensuing antagonism between the State and NGOs had fortunately given way to a change in the State's attitude towards the issue of human rights, with the establishment of a Human Rights Desk in Armenia. An example was the reporting process to the Committee on the Elimination of Discrimination against Women (CEDAW): although Armenia's initial report to that Committee had been heavily criticized by domestic NGOs, a large number of such organizations had participated in the preparation of the second report, which had been much better received. Time was required to enable officials to become familiar with international human rights instruments so that they might learn from the mistakes committed in the past.

38. With regard to the optional protocol to the Covenant, a working group set up to discuss the matter had been established and subsequently dissolved. It was hoped that the group could be re-established so that an opinion could be forwarded to the Committee. On the question concerning agriculture, Armenia was indeed a mountainous country, 90 per cent of which consisted of volcanic plateaux. Despite the very small area of arable land available, fruit and vegetables were produced, although the amount of wheat harvested was insufficient for the country's needs. Further problems with regard to crop production also occurred as a result of the high average elevation of over 1,000 metres.

39. The blockade imposed on Armenia had had a very negative impact on its people and had forced it to think of alternative transportation routes. Previously, the main railroad had run from the north to Armenia via Azerbaijan. Goods had ceased to flow along that route owing to the embargo imposed. Furthermore, another route via Georgia and Abkhazia had closed as a result of the conflict between those two peoples. The first alternative pipeline route for oil and gas had been sabotaged and oil was now shipped to Russian Black Sea ports and subsequently by road or rail to Armenia. The nuclear power plant closed after the 1988 earthquake had now reopened under the close supervision of the International Atomic Energy Agency (IAEA). Consequently, Armenia was an energy-exporting country. In general, it was a strong supporter of all forms of economic cooperation and enjoyed good relations in that sphere with countries such as Georgia, the Islamic Republic of Iran and member States of the European Union.

40. Mr. NAZARIAN (Armenia) said that the initial report reflected the application of international law and the implementation of a large number of human rights instruments. The Armenian Constitution fulfilled the twofold purpose of confirming the status of the people as the sole source of power and offering guarantees for the respect of fundamental human rights and freedoms. It also defined the legal structure of the State and the mechanisms through which the rights in question could be enjoyed. Those rights were set forth in the Constitution and classified according to three groups, one of which included social, economic and cultural rights. The enjoyment of such rights was defined in articles 15 and 16 of the Constitution and the State guaranteed equal treatment for citizens irrespective of their social status. In line with article 3 of the Covenant, prominence was accorded to the elimination of gender discrimination as well as discrimination based on national, racial, political and social origin, as proclaimed in article 15 of the Constitution.

41. Mr. CEAUSU said that according to the UNDP Human Development Report, 1996, the average wage of women in Armenia was one third lower than that of men. The Human Rights Committee had also concluded that de facto discrimination against women persisted. That far from satisfactory situation should be considered in the light of Armenia's obligations under the Covenant. The table presented in response to number 13 of the list of issues showed that the average monthly nominal wage was higher for men. The situation had been particularly alarming in 1997 when men appeared to have received more than twice the amount paid to women. He requested clarification on the matter.

42. Paragraph 50 of the initial report stated that articles 23-27 of the Armenian Constitution provided for restrictions on certain basic human and civil rights and freedoms, such as the freedom of thought, conscience, and religion. Even though such matters would normally be considered in the framework of the International Covenant on Civil and Political Rights, it was legitimate to observe that under article 4 of that Covenant no State could make derogations from the provisions of its article 18. The reference to such rights and freedoms in the initial report appeared to be misplaced.

43. Mr. GRISSA pointed out that although women were often better educated than men, they occupied only a small number of high-level posts. For example, paragraph 46 of the initial report stated that between 1980 and 1995/96, the number of women serving in the National Assembly had decreased from 121 to 12, while the number of men had remained more or less stable. What was the reason for that process, given that Armenia had become an independent country in the meantime?

44. Mr. TEXIER said that, according to the replies to the list of issues, the new Refugees Act did not contain any discriminatory measures, except that refugees were not entitled to vote, to stand for election, or to be members of any party. It was not, however, made clear whether the Act allowed access to work, medical care and education for all refugees. Information should be provided on the matter. He asked how refugee status was obtained and whether it was granted by an independent commission or an administrative body. It would also be interesting to know from which countries the majority of refugees came and which articles of the Act were to be amended under the process referred to in the reply to question 9 of the list of issues.

The meeting rose at 1 p.m.